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ENVIRONMENTAL COVENANT AND EASEMENT

This Environmental Covenant and Easement (“Environmental Covenant”) is executed pursuant to the Uniform Environmental Covenants Act, Minn. Stat. ch. 114E (Supp. 2007) (“UECA”) in connection with an environmental response project approved by the Minnesota Pollution Control Agency.

1. Grantor And Property Description.

A. Owner and Legal Description of Property.

<Name of current owner> is the fee owner of certain real property located at [street address, if any] in [city/town], _____ County, Minnesota (hereinafter the “Property”), shown on Exhibit 1 and legally described as follows:

[incorporate legal description here; if description is lengthy may refer here to an attachment that sets forth the legal description].

B. Grantor.

<Name of current owner(s)> is the Grantor of this Environmental Covenant.

2. Grant of Covenant; Covenant Runs With The Land.

Grantor does hereby Covenant and Declare that the Property shall be subject to the Activity and Use Restrictions and associated terms and conditions set forth in this Environmental Covenant including the Easement in Paragraph 9, and that these Activity and Use Restrictions and associated terms and conditions constitute covenants which run with the Property and which shall be binding on Grantor, its heirs, successors and assigns, and on all present and future Owners of the Property and all persons who now or hereafter hold any right, title or interest in the Property. An Owner is bound by this Environmental Covenant during the time when the Owner holds fee title to the Property. Any other person that holds any right, title or interest in or to the Property is bound by this Environmental Covenant during the time the person holds the

right, title or interest. Subject to Paragraph 14.D, an Owner ceases to be bound by this Environmental Covenant when the Owner conveys fee title to another person, and any other person that holds any right, title or interest in or to the Property ceases to be bound when the person conveys the right, title or interest to another person.

3. Environmental Agency; Grantee and Holder of Environmental Covenant; Acceptance of Interest in Real Property.

A. Environmental Agency.

The Minnesota Pollution Control Agency (“MPCA”) is the environmental agency with authority to approve this Environmental Covenant under UECA.

B. Grantee and Holder; Acceptance of Interest In Property.

The MPCA is the Grantee and Holder of the interest in real property conveyed by this Environmental Covenant. MPCA has authority to acquire an interest in real property, including an Environmental Covenant, for response action purposes under Minn. Stat. § 115B.17, subd. 15. MPCA’s signature on this Environmental Covenant constitutes approval of this Environmental Covenant under UECA and acceptance of the interest in real property granted herein for purposes of Minn. Stat. § 115B.17, subd. 15.

4. Environmental Response Project.

The Property is the location of releases or threatened releases of hazardous substances, or pollutants or contaminants that are addressed by an environmental response project under the MPCA [identify specific MPCA program: Voluntary Investigation and Cleanup (“VIC”) Program, Superfund and Emergency Response Program, Dry Cleaner Cleanup Program, Closed Landfill Program or Hazardous Waste Corrective Action Program] pursuant to Minn. Stat. § [insert legal authorities used by the MPCA to approve the environmental response project that requires this environmental covenant]. MPCA has determined that an Environmental Covenant is needed for the Property because [state basis for requiring the covenant, such as: presence and potential exposure to residual contamination; ground water contamination; presence of response action installations, monitoring wells, etc.].

5. Statement of Facts.

[delete heading for subparagraph A if not using paragraph B]

[A. Facts About the Release and Response Actions.]

[State facts about the nature and scope of the releases (Identified Release(s)) that are or were the subject of investigation and remedial action, the response actions taken to address the releases, residual contamination, and any ongoing operation, maintenance or monitoring of response actions needed to assure long-term protection of public health and welfare and the

environment. If facts are used to satisfy MERLA affidavit requirement, they must address the following: the identity, quantity, location, condition and circumstances of the contamination to the full extent known or reasonably ascertainable; and if response actions have been taken, a description of the response actions (including dates of the actions and whether approved by MPCA), and any residual contamination and response action structures and equipment remaining on the property.]

[insert subparagraph B if facts in subparagraph A are used to satisfy MERLA affidavit requirement]

[B. Facts Constitute Affidavit Under Minn. Stat. § 115B.16, subd. 2.

The facts stated in Paragraph 5.A. are stated under oath by the person signing this Environmental Covenant on behalf of the Grantor, and are intended to satisfy the requirement of an affidavit under Minn. Stat. § 115B.16, subd. 2. In the event of a material change in any facts stated in Paragraph 5.A. requiring the recording of an additional affidavit under Minn. Stat. § 115B.16, subd. 2, the additional affidavit may be made and recorded without amending this Environmental Covenant.]

6. Definitions.

The terms used in this Environmental Covenant shall have the meanings given in UECA, and in the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §115B.02. In addition, the definitions in this Paragraph 6 apply to the terms used in this Environmental Covenant.

A. “Commissioner” means the Commissioner of the Minnesota Pollution Control Agency, the Commissioner’s successor, or other person delegated by the Commissioner to act on behalf of the Commissioner.

B. “MPCA” means the Minnesota Pollution Control Agency, an agency of the State of Minnesota, or its successor or assign under any governmental reorganization.

C. “Owner” means a person that holds fee title to the Property and is bound by this Environmental Covenant as provided in Paragraph 2. When the Property is subject to a contract for deed, both the contract for deed vendor and vendee are collectively considered the Owner.

D. “Political Subdivision” means the county, and the statutory or home rule charter city or township, in which the Property is located.

E. “Property” means the real property described in Paragraph 1 of this Environmental Covenant.

F. “Restricted Area” means a portion of the Property consisting of [identify a building, structure (such as parking lot, berm, containment facility, etc.) or area], depicted on

Attachment ____ [a map or diagram of Property showing Restricted Area and identifying location of affected structure, building or area] and legally described as follows:

[insert legal description here; if description is lengthy may refer here to an attachment that sets forth the legal description (survey of Restricted Area may be required)].

7. Activity and Use Limitations.

The following Activity and Use Limitations shall apply to the Property:

A. Use Limitations.

[use limitations are general limitations on the types of land uses that are allowed on the Property, such as residential, commercial, industrial or open-space]

[see existing MPCA covenants for examples]

B. Activity Limitations.

The following activities on the Property [or within the Restricted Area(s)] are prohibited except as provided in Paragraph 8:

[activity limitations are limitations on specific types of physical activities affecting soil, ground water, surface water, etc. that may be conducted on the Property; following are some examples]

There shall be no disturbance or alteration of soils on the [Property] [or] [Restricted Area(s)] of any nature whatsoever, specifically including, but not limited to, grading, excavation, boring, drilling or construction.

[or]

Except as required as part of the MPCA-approved environmental response project, there shall be no extraction of ground water from beneath the Property for any purpose and no installation of any wells, borings, trenches or drains which could be used to extract such ground water.

[or]

There shall be no disturbance, removal or interference with

[the operation of any of the response action equipment, installations and structures located on or beneath the Property (response actions should be described here or in an Attachment)]

[or]

[pavement, landscaping, vegetative cover or building surfaces that provide a barrier to infiltration of precipitation or human exposure to residual contamination].

[insert the following only if Activity Limitations apply only to Restricted Area(s):]

[The limitations in this Paragraph 7.B. do not apply to activities on any part of the Property outside of the Restricted Area(s), including maintenance or repair of existing buildings, structures, underground sewer, water, electrical or telephone services, or installation of fencing and signage, when such activities are not expected to, or are not reasonably likely to, result in disturbance of (contaminated soil or ground water) (or) (response action equipment, installations and structures).]

C. Affirmative Obligations of Owner.

The Activity and Use Limitations imposed under this Environmental Covenant include the following affirmative covenants and obligations:

[Insert affirmative obligations that Owner must comply with to maintain protectiveness of the environmental response project. Examples shown below.]

Owner shall maintain the integrity of pavement, building floors and vegetative cover at the Property to prevent infiltration of precipitation and/or prevent human exposure to residual contamination in the Restricted Area[s].

Owner shall maintain, operate and monitor the vapor venting system in the _____ building located on the Property as shown in Attachment __, in accordance with the Vapor Control System Operation, Maintenance and Monitoring Plan set forth in Attachment __.

Owner shall maintain, operate and monitor the response actions or monitoring wells at the Property as shown in Attachment __, in accordance with the Operation and Maintenance Plan approved by the MPCA set forth in Attachment __.]

8. Prior MPCA Approval Required For Activities Limited Under Environmental Covenant.

[delete heading for subparagraph A if not using subparagraph B]

[A. Approval Procedure.]

Any activity subject to limitation under Paragraph 7.B. shall not occur without the prior written approval of the Commissioner. The Commissioner's approval may include conditions which the Commissioner deems reasonable and necessary to protect public health or

welfare or the environment, including submission to and approval of a contingency plan for the activity. Within 60 days after receipt of a written request for approval to engage in any activities subject to a limitation under Paragraph 7.B., the MPCA shall respond, in writing, by approving such request, disapproving such request, or requiring that additional information be provided. A lack of response from the Commissioner shall not constitute approval by default or authorization to proceed with the proposed activity.

[Include subparagraph B if Paragraph 7.B. activity limitations include limits on soil excavation.]

[B. Emergency Procedures.

Owner shall follow the procedures set forth in this Paragraph 8.B. when an emergency requires immediate excavation affecting contaminated soil or other media [at the Property] [or] [in the Restricted Area(s)] to repair utility lines or other infrastructure on the Property, or to respond to other types of emergencies (e.g., fires, floods):

i. notify the Minnesota Duty Officer, or successor officer, immediately of obtaining knowledge of such emergency conditions; the current phone numbers for the Duty Officer are 1-800-422-0798 (Greater Minnesota only); (651) 649-5451 (Twin Cities Metro Area and outside Minnesota); fax (any location) (651) 296-2300 and TDD (651) 297-5353 or 800-627-3529.

ii. assure that the persons carrying out the excavation limit the disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

iii. assure that the persons carrying out the excavation prepare and implement a site-specific health and safety plan for excavation and undertake precautions to minimize exposure to workers, occupants and neighbors of the Property to contaminated media (e.g., provide appropriate types of protective clothing for workers conducting the excavation, and establish procedures for minimizing the dispersal of contaminated dust); and

iv. assure preparation and implementation of a plan to restore the Property to a level that protects public health and welfare and the environment. The plan must be submitted to and approved by the MPCA prior to implementation of the plan, and a follow-up report must be submitted to MPCA after implementation so that the MPCA can determine whether protection of the public health and welfare and the environment has been restored.]

9. Easement; Right of Access to the Property.

Owner grants to the MPCA, the [City or Town] of _____, and _____ County an easement to enter the Property from time to time, to inspect the [Property] [or] [Restricted Area(s)] and to evaluate compliance with the Activity and Use Limitations set forth in Paragraph 7. In addition, for the purpose of evaluating compliance, Owner grants to the MPCA the right to take samples of environmental media such as soil, ground water, surface water, and air, and to

install, maintain and close borings, probes, wells or other structures necessary to carry out the sampling.

[add following paragraph where applicable; for example, where the Property is the site of an MPCA funded or supervised cleanup.]

[Owner further grants to the MPCA an easement to enter the Property to operate, maintain and monitor response actions on the Property connected to the MPCA-approved response action project, to take further response actions deemed reasonable and necessary by the MPCA to protect public health and welfare and the environment from the Identified Release of hazardous substances or pollutants or contaminants, and to dismantle and close such response actions including closure of monitoring wells in accordance with State law and rules.]

MPCA, the [City or Town] of _____, and _____ County, and their employees, agents, contractors and subcontractors, may exercise the rights granted under this Paragraph 9 at reasonable times and with reasonable notice to the then-current owner, conditioned only upon showing identification or credentials by the persons seeking to exercise those rights.

10. Duration; Amendment or Termination of Environmental Covenant.

A. Duration of Environmental Covenant.

This environmental covenant is perpetual as provided in Minn. Stat. § 114E.40(a).

B. Amendment or Termination By Consent.

i. This Environmental Covenant may be amended or terminated in writing by the Owner and the MPCA. An amendment is binding on the Owner but does not affect any other interest in the Property unless the person holding that interest has consented to the amendment or agreed to waive its right to consent.

ii. The Grantor of this Environmental Covenant agrees that, upon conveying fee title to the Property to any other person, the Grantor waives the right to consent to amendment or termination of this Environmental Covenant.

C. Termination, Reduction of Burden, or Modification By MPCA.

The MPCA may terminate, reduce the burden of, or modify this Environmental Covenant as provided in Minn. Stat. § 114E.40.

11. Disclosure in Property Conveyance Instruments.

Notice of this Environmental Covenant, and the Activity and Use Limitations and Compliance Reporting Requirements set forth in Paragraphs 7 and 19 of this Environmental Covenant, shall be incorporated in full or by reference into all instruments conveying an interest

in and/or a right to use the Property (e.g., easements, mortgages, leases). The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT UNDER MINN. STAT. CH. 114E, DATED _____, RECORDED IN THE OFFICIAL PROPERTY RECORDS OF _____ COUNTY, MINNESOTA AS DOCUMENT NO. _____.

12. Recording and Notice Of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant.

Within 30 days after the MPCA signs and delivers to Grantor this Environmental Covenant, the Grantor shall record this Environmental Covenant in the office of the County Recorder or Registrar of Titles of _____ County.

B. Termination, Amendment or Modification.

Within 30 days after MPCA signs and delivers to Owner any termination, amendment or modification of this Environmental Covenant, the Owner shall record the amendment, modification, or notice of termination of this Environmental Covenant in the office of the County Recorder or Registrar of Titles of _____ County.

C. Providing Notice of Covenant, Termination, Amendment or Modification.

Within 30 days after recording this Environmental Covenant, the Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

- i. the MPCA;
- ii. each person holding a recorded interest in the Property;
- iii. each person in possession of the Property; and
- iv. the environmental officer of each political subdivision in which the Property is located.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the Owner shall transmit a copy of the document in recorded form to the persons listed in items i to iv above.

13. Notices To Grantor and Environmental Agency.

A. Manner Of Giving Notice.

Any notice required or permitted to be given under this Environmental Covenant is given in accordance with this Environmental Covenant if it is placed in United States first class mail postage prepaid; or deposited cost paid for delivery by a nationally recognized overnight delivery service; or transmitted by facsimile if followed by mailed notice or overnight delivery as above required.

B. Notices to the Grantor.

Notices to the Grantor shall be directed to:

[name, address and other contact information (telephone, fax, etc.)
of person who is contact for grantor]

C. Notices to MPCA.

All notices, including reports or other documents, required to be submitted to the MPCA shall be submitted to:

[name, address and other contact information (telephone, fax, etc.)
of MPCA staff or office to which submittals should be made]

14. Enforcement and Compliance.

A. Civil Action for Injunction or Equitable Relief.

This Environmental Covenant may be enforced through a civil action for injunctive or other equitable relief for any violation of any term or condition of this Environmental Covenant, including violation of the Activity and Use Limitations under Paragraph 7 and denial of Right of Access under Paragraph 9. Such an action may be brought by:

- i. the MPCA;
- ii. a political subdivision in which the Property is located; or
- iii. a person whose interest in the Property or whose collateral or liability may be affected by the alleged violation.

B. Additional Rights of Enforcement By MPCA.

In addition to its authority under subparagraph A of this Paragraph 14, the MPCA may enforce this Environmental Covenant using any remedy or enforcement measure authorized under UECA or other applicable law, including remedies pursuant to Minn. Stat. §§ 115.071, subds. 3 to 5, or 116.072.

C. No Waiver of Enforcement.

Failure or delay in the enforcement of this Environmental Covenant shall not be considered a waiver of the right to enforce, nor shall it bar any subsequent action to enforce, this Environmental Covenant.

D. Former Owners And Interest Holders Subject to Enforcement.

Subject to any applicable statute of limitations, an Owner, or other person that holds any right, title or interest in or to the Property remains subject to enforcement with respect to any violation of this Environmental Covenant by the Owner or other person which occurred during the time when the Owner or other person was bound by this Environmental Covenant regardless of whether the Owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

E. Other Authorities of MPCA Not Affected.

Nothing in this Environmental Covenant affects MPCA's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances or pollutants or contaminants at or from the Property, or to enforce a consent order, consent decree or other settlement agreement entered into by MPCA, or to rescind or modify a liability assurance issued by MPCA, that addresses such response actions.

15. Administrative Record.

Subject to the document retention policy of the MPCA, reports, correspondence and other documents which support and explain the environmental response project for the Property are maintained by the MPCA [program name] at the MPCA's office at _____ in _____, Minnesota in the file maintained for [name of Superfund Site or VIC project name and/or number]: _____.

16. Representations and Warranties.

Grantor hereby represents and warrants to the MPCA and any other signatories to this Environmental Covenant that, at the time of execution of this Environmental Covenant:

A. Every fee owner of the Property has been identified;

B. Grantor holds fee simple title to the Property which is:

(choose one of the following)

[free and clear of any encumbrances] [or]

[subject to the interests and encumbrances identified in Attachment __ to this Environmental Covenant].

C. Grantor has authority to grant the rights and interests and carry out the obligations provided in this Environmental Covenant;

D. Nothing in this Environmental Covenant materially violates, contravenes, or constitutes a default under any agreement, document or instrument that is binding upon the Grantor[.] [; and]

[use following paragraph if there are other interest holders, such as mortgagees, lessees, or easement holders who must agree to be bound by the Environmental Covenant]

[E. Except as otherwise directed by MPCA, Grantor has obtained, from each person holding an interest and encumbrance in the Property identified in Attachment __ a Subordination Agreement, or other agreement satisfactory to the Commissioner, assuring that such person is bound by this Environmental Covenant and that this Environmental Covenant shall survive any foreclosure or other action to enforce the interest. Such an agreement may include a waiver of that person's right to consent to any amendment of this Environmental Covenant. Executed agreements by such persons are attached as Attachments __ to __ to this Environmental Covenant.]

17. Governing Law.

This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

18. Compliance Reporting.

The Owner shall submit to MPCA on an annual basis a written report confirming compliance with the Activity and Use Limitations provided in Paragraph 7 and summarizing any actions taken pursuant to Paragraph 8 of this Environmental Covenant. Reports shall be submitted on the first July 1 that occurs at least six months after the effective date of this Environmental Covenant, and on each succeeding July 1 thereafter.

Owner shall notify the MPCA as soon as possible of any actions or conditions that would constitute a breach of the Activity and Use Limitations in Paragraph 7.

19. Notice of Conveyance of Interest in Property.

Owner shall provide written notice to MPCA within 30 days after any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the new Owner, and the portion of the Property conveyed to that Owner.

20. Severability.

In the event that any provision of this Environmental Covenant is held by a court to be unenforceable, the other provisions of this Environmental Covenant shall remain valid and enforceable.

21. Effective Date.

This Environmental Covenant is effective on the date of acknowledgement of the signature of the MPCA.

[use next sentence if Grantor is an organization rather than an individual]

[THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.]

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

<NAME OF GRANTOR>

By _____ (signature)

[Name of signer] _____ (print)

[Title] _____ (print)

State of Minnesota)
) SS.
County of _____)

[use the following language when this instrument is NOT intended to meet the affidavit requirement of Minn. Stat. § 115B.16, subd. 2]

On _____, 20 __, this instrument was acknowledged before me by, <Name>, [use following when Grantor is an organization] [<Title> of <Name of Grantor>, on behalf of <Grantor>].

[use the following language when this instrument IS intended to meet the affidavit requirement of Minn. Stat. § 115B.16, subd. 2]

On _____, 20 __, this instrument was acknowledged before me, and the facts stated herein were [sworn to or affirmed] [select one] by, <Name>, [use following when Grantor is an organization] [<Title> of <Name of Grantor>, on behalf of <Grantor>].

(signature)
Notary Public
My Commissioner Expires _____

FOR THE ENVIRONMENTAL AGENCY AND HOLDER:

MINNESOTA POLLUTION CONTROL AGENCY

By _____ (signature)

[Name] _____ (print)

Michael Kanner, Manager
Superfund and Emergency Response Section
Remediation Division
Delegate of the Commissioner of the
Minnesota Pollution Control Agency

State of Minnesota)
)SS.
County of Ramsey)

This instrument was acknowledged before me on _____, 20____, by _____, a delegate of the Commissioner of the Minnesota Pollution Control Agency, a state agency, on behalf of the State of Minnesota.

_____ (signature)
Notary Public
My Commission Expires _____

THIS INSTRUMENT WAS DRAFTED BY
AND WHEN RECORDED RETURN TO:

[Name and address of person or corporation
who drafted this document]

AG: #1903845-v1
Updated 3/18/08